IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8715 OF 2003

1. Shri Sanjay Raghunath Deshmukh,

2. Shri Shamrao Ishwara Patil,

3. Shri Vivek Vijaykumar Pawar,

4. Shri Abhay Arun Mahishi,

5. Shri Sanjay Vasant Kadam,

6. Shri Rajendra Dagadu Shinde,

7. Shri Shailendrakumar B. Hivarekar,

8. Shri Jayant Shrihari Walvekar,

9. Shri Shahanawaz Shabbir Sutar,

10. Shri Amol Maruti Vibhute,

11. Shri Satish Bapuso Kumbale,

12. Shri Kailas Laxman Ramteke,

13. Shri Kailasnath Bhimrao Sutar, ... Petitioners.

V/s.

1. The State of Maharashtra,

2. The Director,
   Maharashtra State Board of
   Technical Education.

3. Director of Technical
   Education,

4. Joint Director of Technical
   Education (Pune Region).

5. All India Council for Technical
   Education (A.I.C.T.E.)

6. The Chairman,
   Kasegaon Education Society.

7. The Secretary,
   Kasegaon Education Society.

8. Rajarambapu Institute of
   Technology (Polytechnic). ... Respondents.

S.S.Pakale for the petitioners.

R.D.Rane, A.G.P. for respondent Nos.1, 3 and 4.

R.V.Govilkar for respondent No.2.

Ms.Beena Menon for respondent No.5.

A.A.Kumbhakoni for respondent Nos.6 to 8.

CORAM : F.I. REBELLO AND
S.P. KUKDAY, JJ.

DATED : 25th February 2005.

ORAL JUDGMENT : (Per Rebello, J.)

. Rule.

. Heard forthwith.

2. The petitioners were all teachers working with respondent No.8, which was run by Kasegaon Education Society. The Society had earlier closed down two courses, namely, the Civil Engineering and Mechanical Engineering. The affected teachers preferred petition before this Court being Writ Petition No.1330 of 2002. Various contentions were urged by them pleading that the closure by the society was null and void. The petitioners then had also raised the contention, that the closure of the courses was contrary to section 35 of the Maharashtra State Board of Technical Education Act, 1997 (hereinafter referred to as the "said Act"). In the petition which was numbered as Writ Petition No.1330 of 2002, after hearing the parties a learned Division Bench of this Court, was pleased to allow the

same in terms of what was set out therein. In so far as the contention urged on behalf of the petitioners therein that there was non-compliance of the requirement of section 35 of the Act, the learned Bench found, that it was not necessary to enter in to that question considering that All India Council for Technical Education ("AICTE" for short), respondent No.5 herein had granted permission on certain terms and conditions. One of the terms and conditions provided that no course shall be discontinued without prior permission of AICTE. The learned Division Bench proceeded to observe that it was open to respondent Nos.1 to 8 herein to make an appropriate application to AICTE in accordance with law and, if such an application is made, then AICTE, will take appropriate decision and it was made clear that the order passed by the Division Bench will not come in the way of the institution or AICTE in taking appropriate decision. The management aggrieved by this order preferred S.L.P. which was dismissed.

3. It appears that respondent Nos.6 to 8 herein applied to AICTE including for closure of the courses in Mechanical and Civil Engineering. AICTE was pleased to grant permission by imposing the following specific conditions:

Closure of course may be permitted subject to compliance of all the directives given by Hon'ble High court / Hon'ble Court & all the conditions laid down by M.S.B.T.E. (i.e. respondent No.2 herein represented by its Director).

4. On 25th March 2003 the respondent No.2 addressed a letter to the Chief Secretary, Higher and Technical Education of respondent No.1, setting out therein, that respondent No.8 has made application for closure of two courses. A committee was then appointed which submitted its report. Permission was given to close down and the following conditions were imposed:

"1. It is binding to the institute that, all the regular permanent employees concerned with Civil Engineering and Mechanical Engineering should be paid salary and all other dues till the date of legal closure of the institute.

2. The institute will help for transferring the students to other institute who had taken admission for these courses e.g. leaving certificate, previous mark sheets etc.

3. It is binding on the institute to follow the orders of Hon. High Court, Mumbai, in W.P.1330/2002

4. The retrenched employees will be absorbed by the society with priority while filling the vacant posts in schools/ colleges of the Society.

. If the institute submits affidavit for fulfilling above said conditions, the board will give permission for closing down the two Course viz. Civil Engineering and Mechanical Engineering as per Section 35 of the M.S.B.T.E. Act, after getting the permission of the Government.

. Hence, the Government is requested to permit Rajarambapu Institute of Technology (Poly), Tal: Walwa, Dist: Sangli to close down the above said two courses, as per Section 35 of the M.S.B.T.E. Act.

5. The Director of Technical Education, respondent No.3 by letter dated 17th July 2003 pursuant to the letter dated 9th July 2003 of respondent No.5, informed the Chairman of respondent No.8 that respondent No.5 has permitted closure of the Civil and Mechanical Courses of the institute and, therefore, in accordance with the permission and subject to the approval of the Government, the Director is permitted to close down the Civil and Mechanical courses of the institute from the year 2003-04 subject to the following conditions:

"1) It is binding to the institute that, all the regular permanent employees concerned with Civil Engineering and Mechanical Engineering should be paid salary and other legal dues till the date of legal closure of the institute.

2) The institute will assist for transferring the students to other institutes who had taken admission for those courses e.g. leaving certificate, previous mark sheets etc.

3) It is the sole responsibility of the institute to follow the orders of Hon. High Court, Mumbai in W.P. 1330/2002.

4) The eligible retrenched employees will be absorbed by the society with priority while filling the vacant posts in other schools/colleges of the society.

5) All the conditions laid down in section 35 of the Maharashtra State Board of Technical Education Act, Rule 38 for closure of diploma courses, should be fulfilled.

6) The society will be responsible for the consequences, if the employees approach to the Hon'ble Court.

6. It is the case of the petitioners as set out and averred in the petition that the services of the petitioners have been terminated without complying with the requirements of section 35(5) of the Act. It is also contended that respondent No.2 has hastily granted permission without approval of the State Government. It is then set out that respondent No.2 has not followed the judgment of this Court in Writ Petition No.1330 of 2002. The petitioners, therefore, were perforced to file contempt petition. The petitioners have also invoked provision of section 2(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act" for short) to point out that prior permission must be obtained in a case of retrenchment and that the employees of the aided course whose services are proposed to be retrenched shall be absorbed by the

Education Officer. At this stage it will not be out of place to mention that respondent No.8 has not been receiving any aid from respondent No.1. It is, therefore set out, that the retrenchment and closure are bad on that grounds. Lastly, it is set out that there is no compliance with the requirements of the conditions imposed either by respondent No.5 or the further conditions imposed by respondent Nos.2 and 3. For the aforesaid reasons, relief as prayed for is sought.

7. Mr.J.R.Bangar, Assistant Director, Directorate of Technical Education has filed an affidavit. It is his case that the Government of Maharashtra has accorded permission vide Government Resolution dated 13th August 2003 for closing down the Civil and Mechanical Engineering courses from the academic year 2002-03 subject to the fulfilment of certain conditions. It is also pointed out that permission granted was conditional and the management has not complied with the conditions laid down by AICTE. Hence the management is liable for the consequence. It is also set out that neither the Principal nor the Chairman of the management has submitted undertaking till the date of affirming the affidavit i.e. 11th February 2004. It is pointed out that there are some failures on the part of respondent No.8 to comply with the conditions.

. On behalf of respondent No.5 Dr.Y.T.Krishne Gowda, Regional Director has filed his affidavit. It is pointed out that respondent No.8 had applied for closure of two existing courses in the institution, namely, Civil Engineering and Mechanical Engineering. Permission has been granted subject to the conditions as set out in terms of letter dated 9th July 2003.

8. Two affidavits have been filed on behalf of respondent Nos.6 to 8 by Shri Ramchandra Dnyandev Sawant, first on 26th October 2004 and second on 25th November 2004. Various objections have been taken as to why the petition should not be entertained. We are really not impressed by those conditions. It is then pointed out, that respondent Nos.6 to 8, considering the judgment of this Court in Writ Petition No.1330 of 2002, were justified in terminating the services of the petitioners. Respondent Nos.6 to 8 further pointed out that section 35 of the said Act would not apply, if read in its correct perspective. It is contended that the said section can be applied only if the entire institution is to be closed and not when some of the courses are to be closed whereas the institution continues to function. It is also pointed out that respondent Nos.6 to 8 have deposited entire compensation amount claimed by the petitioners in Contempt Petition No.277 of 2003 though there is some

pleading by the petitioners that the calculations are not correct. In so far as committing the breach of the provisions of the MEPS Act and the rules framed thereunder, the contention advanced is that, if so there was a remedy under the MEPS Act and rules framed thereunder. It is also set out that respondent No.8 does not have the approval of respondent No.5 for conducting the aforesaid courses from the academic year 2003-04.

. It is also pointed out that a sum of Rs.41,85,436/- has been deposited subsequent to the order dated 12th August 2004 passed by this Court in the contempt petition. In so far as absorbing the petitioners, it is set out that the said condition would only mean, that the petitioners would have a preference in consideration of appointment on the basis of principle "first amongst equals". That, if the petitioners after competing on merits, both on their qualifications and experience are found to be equal to the outsiders, then they would be able to claim preference in the appointment. If, however, better qualified and better experienced candidates are available for fresh appointment, to fill in the vacancies, the petitioners cannot be given preference. It is also pointed out that the said respondents have also filed the required affidavit/undertaking on 24th May 2005 and have annexed copy of the said affidavit.

. The petitioners have filed counter affidavit controverting what has been set out by the contesting respondents.

9. The first issue, therefore, which has to be considered is, whether the closure of courses of the institution requires approval under section 35 of the said Act. Considering the contentions raised the next question is whether the issue requires to be answered, more so considering the earlier judgment of this Court in Writ Petition No.1330 of 2002. The issue was also raised in the said writ petition. The learned Division Bench of this Court was pleased to deal with the said contention in paragraph 6 of its order, by observing as under:

> "In our opinion, it may not be necessary to enter into larger question in view of the fact that in the instant case, on certain terms and conditions permission was grated by A.I.C.T.E. to Respondent No.8. One of the terms and conditions proved that no new course shall be started or "an outgoing course shall be discontinued by the institution" without the prior approval of the A.I.C.T.E. It is not even the case of Respondent No.8 institution

that such permission was sought from and granted by A.I.C.T.E."

. In paragraph-8 of the order it was clarified that it was open to respondent Nos.6 to 8 to make appropriate application to AICTE in accordance with law. If such an application was made, AICTE was to take appropriate decision and the order passed by the Division Bench would not stand in the way of AICTE taking appropriate decision. As we have noted earlier, AICTE had granted permission for closure of the courses by its order dated 9th July 2003, but subject to the limitations imposed, namely, complying with the directives of this Court and other Courts and all other conditions laid down by Maharashtra State Board of Technical Education ("MSBTE" for short). The MSBTE has granted permission by its order dated 25th March 2003 and, similarly, the Director of Technical Education, respondent No.3 has granted permission vide order dated 17th July 2003. It is true that MSBTE has referred to section 35 of the said Act and has also set out that the Government was requested to grant permission to close down the said two courses as per section 35 of the said Act. Thereafter the Director of Technical Education has also granted permission subject to compliance with the requirements of section 35 for closure of courses as set out in section 35 of

the said Act. In the affidavit of Mr.J.R.Bangar it has been expressly set out that vide Government Resolution dated 13th August 2003 permission had been granted for closing down the Civil and Mechanical Engineering courses from the academic year 2002-03 subject to fulfilment of all the conditions laid down by the Government and AICTE. The judgment of the learned Division Bench is of 20th February 2003. Permission by respondent No.5 is subsequent to that. All that section 35 requires is prior permission of the Government and an enquiry by the Board. The Board has been defined to mean the Maharashtra State Board of Technical Education established under section 35. In the order of 25th March 2003 of respondent No.2 it is clearly mentioned that committee was appointed to look into the issue and the committee had recommended closure and pursuant to that respondent No.2 had granted permission. Therefore, without going to the issue whether section 35 applies it is clear that there has been substantial compliance with the requirements of section 35 of the said Act. In these circumstances, in our opinion, we do not think it necessary to answer the general question as raised on behalf of the petitioners.

10. The next issue is whether termination consequent to the closure is in violation of the provisions of the MEPS Act. If it is the contention

of the petitioners that their termination is contrary to the MEPS Act, there would be a remedy under the said Act which is a special legislation and, consequently, it is not necessary for this Court to go into that issue and answer the said contention. In so far as requirement of absorption is concerned, admittedly, respondent No.8 was not an aided institution and, consequently, that requirement is not there more so considering the condition imposed for closure by respondent No.2. In our opinion, therefore, there is no merit in so far as the second contention is concerned.

11. In so far as failure to comply with the conditions imposed, it is set out that clause (1) of letter dated 25th March 2003 was violated. The stand of respondent management as set out in affidavit is that they have deposited in this Court a sum of Rs.41,85,436/-. This amount was deposited pursuant to the order passed by this Court in Contempt Petition No.277 of 2003 dated 12th August 2004. They are prepared in the event there is any error in calculation to deposit the balance, if any.

. If there be any mistake in calculation, we direct respondent No.4 to examine the matter and dispose the same of according to law. The amount so quantified and decided will be binding upon the

parties subject to their right of challenging the order, if aggrieved.

12. With this we now deal with the contention in so far as the filing of the undertaking. In so far the undertaking is concerned, we find that an undertaking-affidavit has been filed dated 24th May 2000 and considering that there is substantial compliance with the directions as contained in letter dated 25th March 2003.

13. The major issue is, in so far as the absorption is concerned. We may once again advert to the condition, which provides that the retrenched employees would be absorbed by the society by giving priority in filling of the vacant posts in schools and colleges of the society. The order of AICTE was that respondent Nos.6 to 8 should comply with the conditions laid down by respondent No.2. The affidavit was to be filed by respondent Nos.6 to 8 showing compliance with the said conditions. Such an affidavit has been filed.

. The petitioners point out that the respondents have now advertised for filling in posts in the institution. Copy of the advertisement has been annexed. It is the case of the petitioners that once there are vacancies, in terms of the conditions

imposed, posts for which the petitioners are eligible cannot be filled in till such time the petitioners are absorbed, if otherwise they meet with the qualifications. In the instant case it is pointed out that the petitioners have the qualifications and have been working with respondent No.8 and they have sufficient experience and as such they should be absorbed before respondent No.8 chooses to make recruitment based on the advertisement.

. On the other hand, on behalf of respondent No.8, learned counsel submits that all that they are required to do is to consider the petitioners along with other candidates and, if the petitioners after competing on merits on both qualifications and experience are found to be equal to the other candidates, then only preference would be given to them.

. The question is whether, that is what the direction issued by respondent No.2 means. We have noted that the language used in the direction is "absorption". It may be true that the termination of services of the petitioners, considering the closure of part of the establishment or courses, may not amount to retrenchment. However, the requirement is that they will be absorbed with priority. The expression "to absorb" would have to be therefore

given its true import. If it given its true meaning then the petitioners will first have to be considered against the available vacancies where they are qualified and, if they are found qualified and otherwise eligible, then to absorb them considering their experience. This does not mean that they have to compete with others in the matter of absorption. Such construction cannot be spelt out from the permission granted by respondent No.2 in its order dated 25th March 2002. Respondent No.8 has undertaken to comply with the said conditions. We are, therefore, of the opinion that the submission made on behalf of the respondents, that the petitioners will be considered along with other applicants and only in the event on merit they are equal to the other applicants will be given priority has to be rejected. The only construction which can be given and capable of giving is, that the petitioners must be first considered for absorption against the available vacancies. If they have the qualification and considering their experience, they are to be absorbed unless there being any other reason why they cannot be absorbed. We, therefore, direct respondent Nos.6 to 8 that before interviewing any candidates who have applied, pursuant to the advertisement, to first consider the case of the petitioners herein for absorption against the vacancies for which they are qualified.

14. Considering the above, though it is not possible to grant relief in terms of prayer clauses (a) and (b) and though no relief can be granted in terms of prayer clause (e) as the petitioners were not working with the aided institution, relief in terms of prayer clause (c) can very well be granted. We, therefore, direct respondent No.6 to 8 to absorb the petitioners as prayed in prayer clause (c); subject to what is set out earlier.

. Rule made partly absolute accordingly. There shall however be no order as to costs.

JUDGE **JUDGE**